



TOWN OF NEW WINDSOR

ZONING BOARD OF APPEALS

Regular Session

Date: DECEMBER 10, 2007

AGENDA

7:30 p.m. – Roll Call

Motion to accept minutes of November 5th, 2007 meeting as written.

PRELIMINARY MEETINGS:

1. **KATHLEEN FINNERAN (07-58)** Request for 15 ft. rear yard setback for proposed 14' X 26' deck at 446 Philo Street in an R-4 Zone (**73-4-2**)
2. **DOMINICK NISI (07-59)** Request for 17.2 ft. Side Yard Setback for proposed attached 12ft. X 12 ft. side deck at 725 Mt. Airy Road in an R-3 Zone (**66-1-11**)

PUBLIC HEARINGS:

3. **CHRISTOPHER MEE (07-53)** Request for 1 ft. Front Yard Setback and; 5 ft. Side Yard Setback for proposed 10' X 22' Deck at 738 Mt. Airy Road in an R-3 Zone (**66-1-8**)
4. **WILLIAM HIGHTOWER (07-54)** Request for 8 ft. Rear Yard Setback for existing detached deck and; 3 ft. Side Yard Setback and 8 ft. Rear Yard Setback for existing 8' X 12' shed and; 18 ft. Rear Yard Setback for existing enclosed porch at 15 Valewood Drive in an R-4 Zone (**39-3-23**)

DISCUSSION:

Accept 2008 schedule as written.

FORMAL DECISIONS:

VAN LEEUWEN (07-10)
SPINDLER (07-12)
SARVIS (07-13)
TOMMASI (07-16)
FIRST COLUMBIA (07-11)

LOMBARDI (07-14)
LOMBARDI / VINCENZO (07-15)
FLYNN (07-18)
MAXWELL (07-20)
BROWN (07-21)

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TOWN OF NEW WINDSOR
ZONING BOARD OF APPEALS

DECEMBER 10, 2007

MEMBERS PRESENT: MICHAEL KANE, CHAIRMAN
KIMBERLY VOLPE
KATHLEEN LOCEY
FRANCIS BEDETTI, JR.
PAT TORPEY

ALSO PRESENT: MICHAEL BABCOCK
BUILDING INSPECTOR

ANDREW KRIEGER, ESQ.
ZONING BOARD ATTORNEY

MYRA MASON
ZONING BOARD SECRETARY

REGULAR_MEETING

MR. KANE: I'd like to call to order the regular session of the New Windsor Zoning Board of Appeals.

APPROVAL_OF_MINUTES_DATED_11/5/07

MR. KANE: Motion to accept the minutes of November 5, 2007 meeting as written.

MRS. VOLPE: So moved.

MS. LOCEY: Second it.

ROLL CALL

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MRS. VOLPE	AYE
MR. BEDETTI	AYE
MS. LOCEY	AYE
MR. TORPEY	AYE
MR. KANE	AYE

MR. KANE: Before we go to the preliminary meetings, I would like to thank Eric Lundstrom for his service on the board and congratulate him on his quote unquote move to the Town Board and into the world of politics. And I would also like to introduce and welcome Frank Bedetti for joining us on the zoning board and donating his time as it be.

MR. BEDETTI: It's my honor.

MR. KANE: And I thank you and welcome you.

PRELIMINARY_MEETINGS

KATHLEEN_FINNERAN_(07-58)

MR. KANE: First preliminary meeting Kathleen Finneran. Request for 15 foot rear yard setback for proposed 14' x 26' deck at 446 Philo Street.

Ms. Kathleen Finneran appeared before the board for this proposal.

MR. KANE: If I may just explain that what we do in the Town of New Windsor is we hold two meetings, one's a preliminary meeting so we can get a general idea of what you want to do and we make sure that you can get us all the information that we need to make a decision. In some towns, you walk right in, if you don't have it, you lose. So what you want to do is tell us exactly what you want to do and we'll go over this and then when we do the public hearing which is what we have to make a vote, it will basically be the same thing.

MS. FINNERAN: Just to construct a deck off the back of the house, I never had one before, it's not redoing it.

MR. KANE: How big is the deck going to be? It's 14 x 26. Is the 14 coming out from the house and 26 long?

MS. FINNERAN: Yes and 26 long.

MR. KANE: So 14 x 26 you wouldn't consider to be an oversized deck for your neighborhood?

NS. FINNERAN: I don't think so.

MR. KANE: Similar in size and nature to other decks in your particular neighborhood?

MS. FINNERAN: Yes.

MR. KANE: Will there be, obviously I have the pictures in front of me and I can see but I have to ask certain questions, you won't be cutting down any trees or substantial vegetation?

MS. FINNERAN: No, that's all open.

MR. KANE: Creating water hazards or runoffs?

MS. FINNERAN: I doubt it.

MR. KANE: Are there any easements on your property where you plan to put the deck?

MS. FINNERAN: No.

MR. TORPEY: Excuse me, where is this deck going into, just going to be out in the middle or going to the sliding glass door?

MR. KANE: It's right by the sliding glass door.

MS. FINNERAN: Yes. This is a new door here, this will be here.

MR. KANE: The exit from the door up there and obviously without a deck opening with doors that would be a safety hazard?

MS. FINNERAN: Yes.

MRS. VOLPE: Can we look at one of the photos because we don't have those?

MR. KANE: Absolutely. With the deck coming out 14 feet approximately, Mike, it's looking like it's going to leave 35 feet going to the rear?

MR. BABCOCK: That's correct.

MR. KANE: Is 50 foot?

MR. BABCOCK: Fifty feet is today's rules.

MR. KANE: Used to be 40, right?

MR. BABCOCK: Yeah, used to be 40 and I'm sure when this house was built my paperwork says 75, I think it was even 30.

MR. KANE: Okay, so actually with the 35 foot left in the back yard that would make it similar to other homes in that particular neighborhood currently?

MS. FINNERAN: Yeah, most of them when people move in they had their decks up, I'm just 30 years late.

MR. KANE: Okay, I have no further questions at this moment.

MR. BEDETTI: No.

MRS. VOLPE: No.

MS. LOCEY: The only thing I see is that our agenda under Kathleen Finneran as the applicant and this says the applicant is Thomas, I just wondered.

MS. FINNERAN: I guess I'm the one who filled out all the paperwork and it's in both names.

MR. KANE: Husband and wife?

MS. FINNERAN: Yes.

MR. KRIEGER: Both own the property?

MS. FINNERAN: Yes.

MS. LOCEY: I was just curious.

MS. FINNERAN: I guess I filled it all out.

MR. KANE: We just like to cross all the Ts and dot all the Is because somebody looks at it down the road--I'll accept a motion.

MS. LOCEY: I will offer a motion to schedule a public hearing on the application of Kathleen Finneran for her requested 15 foot rear yard setback as detailed on the December 10, 2007 agenda for the Zoning Board of Appeals.

MR. TORPEY: I'll second that.

ROLL CALL

MRS. VOLPE AYE

MR. BEDETTI AYE

MS. LOCEY AYE

MR. TORPEY AYE

MR. KANE AYE

MR. KANE: We have set you up for the public hearing, this will tell you all the procedures, everything that you need to do and if you have any questions, you can give Myra a call.

MS. MASON: Just read that over, it tells you everything.

MS. FINNERAN: Thank you very much.

DOMINICK_NISI_(07-59)

MR. KANE: Request for 17.2 foot side yard setback for proposed attached 12 foot x 12 foot side deck at 725 Mt. Airy Road.

Mr. Dominick Nisi appeared before the board for this proposal.

MR. KANE: Good evening, sir.

MR. NISI: Thank you. I don't know, there may be a misunderstanding. When I filled this out, I was told by the inspector 40 foot was the requirement, we would have 22.8 of a foot available and the variance would be the difference between this and the requirement. But the way this thing is worded, it's got me as a 17.2 side yard setback, the setback is actually more than that, it's 22.8.

MR. KANE: So you're requiring a 17.2 variance.

MR. NISI: Variance from the 40 foot?

MR. KANE: Correct.

MR. NISI: But it says side yard setback.

MR. KANE: That's your requested variance.

MR. KRIEGER: It doesn't say either existing or proposed.

MR. BABCOCK: That's your request, sir.

MR. NISI: It doesn't say variance.

MR. KANE: But that's how it's written.

MR. NISI: So I would have an excess.

MR. KANE: You would have 22.8 foot left if it was approved and you built it so your request is for 17.2, just the wordage.

MR. BABCOCK: Request for 17.2.

MR. NISI: Okay, but did you say it was changed to 50 foot?

MR. BABCOCK: No, you're different.

MR. KANE: New Windsor happens to have a couple different zones where things are slightly different, we have that kind of fun.

MR. BABCOCK: This is an R-3 zone, Mr. Chairman, the last applicant was R-4 zone.

MR. KANE: Okay, so what you want to do, Dominick, again, tell us exactly what you want to do in your words.

MR. NISI: Well, it's an open deck off the kitchen on the south side of the house approximately three foot above finished grade proposed to be 12 foot by 12 foot leaving 22.8 to the southerly property line.

MR. KANE: And the 12 foot x 12 foot deck you wouldn't consider that an oversized deck for your particular neighborhood?

MR. NISI: No, I don't think so.

MR. KANE: Neither do I. Cutting down any trees, substantial vegetation in the building of the deck?

MR. NISI: No.

MR. KANE: Creating any water hazards or runoff?

MR. NISI: No.

MR. KANE: Any easements running through where you want to put the deck?

MR. NISI: No.

MR. KANE: And obviously, well, you have a set of steps there but without the deck there you believe the deck would be a better safety feature for the access?

MR. NISI: Not necessarily safety.

MR. KRIEGER: Person exiting if there weren't stairs off a deck would fall?

MR. NISI: Yes.

MR. KANE: I tend to lead a little bit.

MR. NISI: Thank you. Just as a point of interest the nearest house is substantially set back from that property line I'd say at least 50, 60 feet.

MR. KANE: Okay, that's pretty clear cut. Any further questions? I'll accept a motion.

MRS. VOLPE: I will offer a motion that we set up Dominick Nisi for a public hearing for his request for 17.2 foot side yard setback for proposed attached 12 foot x 12 foot side deck.

MR. TORPEY: Second it.

ROLL CALL

MRS. VOLPE AYE

MR. BEDETTI AYE

MS. LOCEY AYE

MR. TORPEY AYE

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MR. KANE

AYE

MR. KANE: Everything you need to do is right on there, as soon as you can complete the list, we can get you set up for a public hearing. Okay? Thank you.

PUBLIC_HEARINGS:

CHRISTOPHER_MEE_(07-53)

MR. KANE: Request for 1 foot front yard setback and 5 foot side yard setback for proposed 10' x 22' deck at 739 Mt. Airy Road.

Mr. Christopher Mee appeared before the board for this proposal.

MR. KANE: Similar to our preliminary meeting, tell us exactly what you want to do.

MR. MEE: It's a 10 x 22 deck off the kitchen, just a small sitting area for seating, maybe grilling, the property I purchased six years ago.

MR. KANE: And again same questions, not cutting down any trees or substantial vegetation in the building of the deck?

MR. MEE: No, sir.

MR. KANE: And creating any water hazards or runoffs?

MR. MEE: No.

MR. KANE: Any easements running through the area where the deck is proposed to be?

MR. MEE: None at all.

MR. KANE: Is the deck similar in size and nature to other decks that are in your neighborhood?

MR. MEE: Yes, I would consider it yes.

MR. KANE: You guys have pictures?

MRS. VOLPE: Yes, we do.

MR. KANE: And obviously without a deck there or something the door that's in the wall on that side of the house it would be a safety issue exiting that?

MR. MEE: Yes, it would.

MR. KANE: Okay, at this point, I will open it up to the public and ask if there's anybody here for this particular hearing? Seeing as there's not, we'll close the public portion of the meeting and ask Myra how many mailings we had?

MS. MASON: On November 27, I mailed out 12 addressed envelopes and had no response.

MR. KANE: We'll bring it back to the board. Any further questions from the board? If there are no further questions, I'll accept a motion.

MS. LOCEY: I'll offer a motion to grant requested variances on the application of Christopher Mee as detailed on the New Windsor Zoning Board of Appeals agenda dated December 10, 2007.

MRS. VOLPE: Second the motion.

ROLL CALL

MRS. VOLPE	AYE
MR. BEDETTI	AYE
MS. LOCEY	AYE
MR. TORPEY	AYE
MR. KANE	AYE

WILLIAM_HIGHTOWER_(07-54)

MR. KANE: Request for 8 foot rear yard setback for existing detached deck and 3 foot side yard setback and 8 foot rear yard setback for existing 8' x 12' shed and 18 ft. rear yard setback for existing enclosed porch at 15 Valewood Drive.

Mr. William Hightower appeared before the board for this proposal.

MR. KANE: Same thing as the preliminary hearing, tell us exactly what you want to do.

MR. HIGHTOWER: Well, the deck first of all was built when I put the pool up first. Second, the shed there's--

MR. KANE: The deck went up, approximately how long has it been there?

MR. HIGHTOWER: About 15 years.

MR. KANE: And let me just as long as we're on the deck ask a question on that, any easements running through where the deck is?

MR. HIGHTOWER: No.

MR. KANE: Cutting down any substantial trees or vegetation?

MR. HIGHTOWER: No.

MR. KANE: Have there been any complaints formally or informally about the deck?

MR. HIGHTOWER: To me personally, no.

MR. KRIEGER: That you know of?

MR. HIGHTOWER: Not that I know of.

MR. KANE: Okay, and that was with the deck, the shed itself--

MR. HIGHTOWER: The shed was original, it came with the house when we moved here in '82, it's got to be replaced, it's collapsing.

MR. KANE: So your proposal is to replace the shed with a new shed?

MR. HIGHTOWER: No, not the same spot, off to the left.

MR. KANE: In a better area?

MR. HIGHTOWER: In a better area, right, which has got better drainage and it doesn't stand out as much.

MR. KANE: Got it. And the reason that again that you require the 8 foot rear yard setback is because the way your property is situated?

MR. HIGHTOWER: The 8 foot setback for the shed, yeah, because it's right on the property line, I moved it right to the back of the property.

MR. KANE: And the reason for moving it all the way in is to give--

MR. HIGHTOWER: Just to get it more out of way, not to be as conspicuous.

MR. KRIEGER: You said there was drainage questions and topographical questions?

MR. HIGHTOWER: Yeah where it is is not a good spot.

MR. KANE: Where you're going to put it not cutting

down substantial trees, creating any water hazards where there was a possible water hazard in the old situation?

MR. HIGHTOWER: No, no.

MR. KRIEGER: The agenda says existing, he's talking about in essence proposed which is fine. Does the public announcement take into account, say either existing or proposed that would bar him from this?

MR. BABCOCK: Well, we said he has an existing shed, we're actually getting the variance from the, where he wants to locate the new one. So I guess he does have an existing shed, we shouldn't have mentioned that though because that's being removed, if we take the word existing out.

MR. KRIEGER: We have a copy of the public announcement?

MS. MASON: Yes, it's just like this.

MR. KRIEGER: Says existing shed on it?

MS. MASON: Yes.

MR. KRIEGER: I think you can go ahead but I think the applicant should be made aware of the fact if it's challenged the court's decision may go the other way.

MR. KANE: If for some reason in a public notice you have to be exact so really should have stated instead of the existing that it should of stated proposed. If at some point somebody wanted to take issue with a positive finding this evening down the line that would give them an opening for that issue. Personally, I don't think it's a reality but you should be aware of it.

MR. KRIEGER: You should be aware that sometime down the line there's a very short period, the law allows a very short period for an Article 78 challenge to a zoning board declaration.

MR. HIGHTOWER: I don't have to worry about this for 10 or 15 years?

MR. KRIEGER: No, if an Article 78 is not filed within 30 days to the Supreme Court they'll be out of time.

MR. KANE: But we need to tell you that.

MR. HIGHTOWER: I'll hold my breath.

MR. KANE: You have no problem with proceeding?

MR. HIGHTOWER: No, not a problem at all.

MR. KANE: Okay.

MR. BEDETTI: Is there any reason why it wouldn't be prudent to reissue a public notice in the correct form?

MR. KRIEGER: Because, well, all I'm thinking of is if the applicant wanted to there's a time and expense consideration for the applicant, that's all.

MR. BEDETTI: That might be more expensive if he does get challenged after the fact.

MR. KRIEGER: Oh, yeah, sure, certainly would be more expensive but I think in this particular issue the chances of such a challenge such as an Article 78 being issued--

MR. HIGHTOWER: In 30 days.

MR. KRIEGER: --within that time period considering the lack of public attendance.

MR. KANE: Let me jump ahead for one second. How many mailings did we have?

MS. MASON: Eighty-six.

MR. KANE: We had 86 mailings to neighbors which is quite large in your area. The odds of somebody at this point challenging it in the next 30 days I think are minimal here, so I'm gonna leave the option up to you.

MR. HIGHTOWER: I'm okay with it. May I ask you a question? Was there any objections to this shed in writing?

MS. MASON: No.

MR. HIGHTOWER: Okay then.

MS. LOCEY: Nobody's here.

MR. BABCOCK: We have to open it up to the public.

MR. KANE: Right, which I will be doing officially in a couple of minutes. Seem reasonable?

MR. BEDETTI: Yes.

MR. HIGHTOWER: All right.

MR. KANE: Sometimes what we look at too is the expense to them versus what's going on here. If there were people in the audience I'd take it down, kick it back and open it up for public opinion, ask if somebody has an issue then we'd go back and do it quote unquote the right way.

MR. KRIEGER: I'm not sure if it would be the right way or not. Ultimately, it's the zoning board's obligation to make the applicant aware of the possibility but the

choice to proceed or not proceed is up to the applicant. You're right that there's a, they're gambling the odds of spending a larger expense as opposed to the inconvenience of a lesser expense at this point possibly but that again that's not an assessment that I think the board should be making for the applicant. Let the applicant after he's been fully informed make his own choice as to which risk he'd like to run with.

MR. KANE: Okay, under the circumstances then we'll go ahead and proceed. An 18 foot rear yard setback for the existing enclosed porch. How long has the porch been in existence?

MR. HIGHTOWER: Since I bought the house.

MR. KANE: '88?

MR. HIGHTOWER: '82

MR. KANE: Any complaints formally or informally that you're aware of?

MR. HIGHTOWER: No.

MR. KANE: Cutting down any trees or substantial vegetation?

MR. HIGHTOWER: No.

MR. KANE: To your knowledge, creating any water hazards or runoffs?

MR. HIGHTOWER: Not to my knowledge.

MR. KANE: Any easements running through the area?

MR. HIGHTOWER: No.

MR. KANE: At this point, I'll open it up to the public and ask if there's anybody in the audience for this particular hearing? Seeing as there's nobody else here, I'll close the public position of the meeting, bring it back to the board and ask the board if they have any further questions. No questions? All right, then I'll accept a motion.

MS. LOCEY: I'll offer a motion to grant the requested variances on the application of William Hightower as detailed on the New Windsor Zoning Board of Appeals agenda dated December 10, 2007.

MRS. VOLPE: Do we have to amend the existing word?

MR. KANE: I would amend that to proposed.

MRS. VOLPE: Second it.

ROLL CALL

MRS. VOLPE	AYE
MR. BEDETTI	AYE
MS. LOCEY	AYE
MR. TORPEY	AYE
MR. KANE	AYE

DISCUSSION

ACCEPT_2008_SCHEDULE_AS_WRITTEN

MR. KANE: Discussion to accept the 2008 schedule as written. Before we talk about the schedule, we have everybody here tonight, we do need to vote for 2008 also for chairman and vice chair, reorganize for 2008. So if you want we'll set that up for the first meeting in January, okay, so if everybody can please be here so we have a full board. Original intent here tonight if Eric was going to be here I'd say let's go ahead and do what we have to do because I wasn't sure how long it would take to fill the seat. So the first meeting in January we'll do that on the reorganization. Any questions on the 2008 schedule?

MS. LOCEY: No.

MR. KANE: We don't really need to vote on it. All the dates look fine to me. And what we did, Frank, so that you know is that we used to have just one meeting during the summer and then have two meetings in the winter and when Myra came on we talked about it a little bit, we decided with weather it was better to really cut it down and be here more during the summer when we're busy. So that's why we just do one meeting in November and December on that.

MR. KRIEGER: You should be aware if the agenda gets big, the chairman may call a special meeting.

MR. KANE: Yeah, if for some reason we needed to, for instance, we did one earlier where we have to if we get a number of applicants that come in we want to serve the public so we wouldn't make them wait. If we needed to fill up a schedule and we had an open date, we would go for it.

FORMAL_DECISION

VAN LEEUWEN	LOMBARDI
SPINDLER	LOMBARDI/VINCENZO
SARVIS	FLYNN
TOMMAS	MAXWELL
FIRST COLUMBIA	BROWN

MR. KANE: The last official thing we need to do is take a vote on the formal decisions and if you want, we can take all the decisions in one vote. That's what we usually do, if someone would like to make a motion.

MR. TORPEY: I'll make a motion for the formal decisions to be accepted as written.

MRS. VOLPE: I'll second the motion.

MR. BEDETTI: May I ask a question please? Would you explain so me what these formal decisions are?

MR. KANE: Basically, those are all the decisions that we made previously that finally came out in writing and we read all of those just to make sure that everything was the way it went through at the meeting.

MS. MASON: He didn't get those.

MR. KANE: You should abstain.

ROLL CALL	
MRS. VOLPE	AYE
MR. BEDETTI	ABSTAIN
MS. LOCEY	AYE
MR. TORPEY	AYE
MR. KANE	AYE

MR. KANE: One other thing, Frank, everything that we do as far as when these guys make a motion, all motions have to be in the affirmative. So even if you disagree

with what's going on, you bring it up in the affirmative, that would be the main thing.

Also as far as schooling, I believe we're four hours a year with schooling. Myra hands out, she keeps us informed of what type of classes may be coming up so you need to qualify and do four hours a year. That's state mandated now.

MR. BABCOCK: Yes.

MR. BEDETTI: Is that training specific to the Zoning Board or is it a general thing?

MR. KANE: It's a ZBA, sometimes combination of planning and zoning depending but you'll see when it comes in it's totally self-explanatory, we usually discuss it a little bit when we get those things.

MR. BEDETTI: Because I just finished a four hour course this past weekend that I got a certificate from that was in the City of Newburgh that addressed both the zoning board and planning board.

MR. BABCOCK: Good.

MR. KANE: I would turn that in.

MR. BABCOCK: That won't be good for 2008, it's each year.

MR. BEDETTI: So it's every year?

MR. KANE: Yes. Also, as far as a little hesitation on making the motions, you can just simply say that it's, you know, a motion to grant the applicant his requested variances as listed on the agenda. So just do it that way, Pat, you don't have to read every word and item that's on there. Okay, motion to adjourn?

MRS. VOLPE: So moved.

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MS. LOCEY: Second it.

ROLL CALL	
MRS. VOLPE	AYE
MR. BEDETTI	AYE
MS. LOCEY	AYE
MR. TORPEY	AYE
MR. KANE	AYE

Respectfully Submitted By:

Frances Roth
Stenographer